IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 183 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHCHANDRA PARSHOTTAMBHAI - Appellant(s)
Versus
NARENDRAKUMAR BHANUPRASAD UPADHYAYA - Defendant(s)

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Appearance :
MR DD VYAS for Appellant(s) : 1,
MR GAURANG H BHATT for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/01/2007

ORAL JUDGMENT

1. Shri D.D. Vyas, learned counsel for the appellant, Shri Gaurang H. Bhatt, learned counsel for the respondent.

2. Appeal has been admitted for hearing on the following substantial question of law:-

> “Whether in the facts and circumstances of the case the suit of the plaintiff-respondent was barred by the principle of res-judicate in view of the earlier decision in an earlier proceeding arising out of Regular Civil Suit No. 206 of 1981?”

3. It is to be noted that the present appellant owns a residential premises at Joravarnagar, Surendranagar. In the said premises, he was carrying on business of running a grinding machine/flour mill. One Trambaklal Dave, a neighbour of the present appellant filed Regular Civil Suit No. 206 of 1981, the trial court granted ad-interim injunction restraining the appellant from carrying on business activities, however, in the appeal filed by the appellant, order was modified. It is not known to anybody as to what had happened to that suit.

4. It is also not in dispute that the present plaintiff-respondent was not a party to the

earlier suit. The present plaintiff filed Regular Civil Suit No. 298 of 1991 praying for the reliefs that the defendant be restrained from creating nuisance by running a flour mill and also sought for a declaration that the property being situated in the residential area cannot be used for any commercial use specially for grinding activity. The defendant appellant appeared and contested the suit, but the learned trial court after hearing the parties came to a conclusion that the action of the appellant was creating regular nuisance and therefore the defendant was required to be injuncted. The trial court without even granting declaration restrained the defendant from running his flour mill. The appeal preferred by the appellant proved futile, therefore, he is before this Court.

5. The question which had been framed at the time of admission of the appeal, in fact, would not arise in the present matter, because, the present plaintiff was not a party to the earlier suit. Provisions of Section 11 of the

Code of Civil Procedure would apply if parties to the litigation and the issue involved in the said litigation are same or the parties are litigating under the same title or are successors or heirs of parties who had earlier settled their scores. In the present matter, the plaintiff could certainly sue the appellant on strength of his personal right.

6. It is submitted by the learned counsel for the appellant that apart from such question, further question would arise in the matter that if on the same set of facts, declaration could not be granted in favour of the plaintiff, then, injunction could also not be issued against the defendant. In the opinion of this Court, the question raised by the learned counsel for the appellant does not deserve any consideration, because, in a given case, even without grant of declaration, an injunction may satisfy the requirement. In the present case, the Court could certainly restrain the appellant-defendant from creating nuisance and under the circumstances, it was not necessary for the

Court to enter into further controversy of granting or refusing declaration.

7. I find no reason to interfere. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.

8. Let a decree be framed accordingly.

[R.S. GARG, J.]

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